IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

WA.No. 792 of 2007

AGAINST THE JUDGEMENT IN WP(C) NO..30181/2006 Dated 26/02/2006

APPELLANT: PETITIONER

JAYA JOSE,
A.W.D.NO.13, CHALAKUDY,
MUKUNDAPURAM TALUK,
THRISSUR DIST.

BY ADV. SRI.T.P.KELUNAMBIAR(SR)
SRI.T.S.RADHAKRISHNA PILLAI
SRI.T.R.RAJEEV

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO THE GOVERNMENT,
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF CIVIL SUPPLIES,
COMMSSIONERATE OF CIVIL SUPPLIES,
THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR, THRISSUR.

4. THE DISTRICT SUPPLY OFFICER, THRISSUR.

5. SHRI A.K.PAUL,
ALAPPATT HOUSE,
NEAR GOVT. HOSPITAL,
CHALAKUDY, THRISSUR.

GOVERNMENT PLEADER SRI.M.P.SREEKUMAR
R5 BY ADV. SRI.KRISHNAKUMAR
SRI.RANJITH THAMPAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18/10/2007,
THE COURT ON 25/10/2007 DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 792 OF 2007 E

Dated this the 25th October, 2007

JUDGMENT

SANKARAN, J.

The appellant filed W.P.(C) No.30181 of 2006 challenging Ext.P5 order, dated 14th November, 2006, passed by the Government, by which the fifth respondent was appointed as the permanent licensee of the whole-sale ration depot No.13 of Thrissur District (Authorised Wholesale Distributor).

2. The whole-sale ration depot No.13 was being run by a consumer co-operative society. The licence in favour of the society was cancelled. Thereafter, Smt.Jaya Jose (appellant) was appointed as a temporary licensee. Applications were invited by the District Collector, Thrissur as per Ext.P1 notice, dated 29th July, 2003, for the appointment of a permanent licensee. Ext.P1 stipulates that the applicant shall submit solvency certificate for Rs.6 lakhs. On appointment, the selected person has to furnish bank guarantee for Rs.1 lakh before signing the agreement. The applicant should provide a godown having 200 tonne storage capacity. The depot could be established either in the applicant's own building or in a building owned by others, provided, the consent letter of the owner is produced. Ext.P1 also provides that if the applicant has previous experience, the certificate in respect of the same should be produced.

3. As per Ext.P1, three persons submitted applications. They are: (1) V.K.Johnson, (2) A.K.Paul (fifth respondent) and (3) Jaya Jose (appellant/ petitioner). As per Ext.P2 order, dated 20.11.2003, the District Collector appointed Jaya Jose as the Authorised Wholesale Distributor. Ext.P2 order was challenged

by the fifth respondent before the Commissioner of Civil Supplies, who passed Ext.P3 order dated 27.4.2005, confirming the order passed by the District Collector. The fifth respondent challenged Ext.P3 order passed by the Commissioner of Civil Supplies in revision before the Government. The Government passed Ext.P5 order dated 14.11.2006. The Government took the view that the fifth respondent, A.K.Paul, shall be appointed as the licensee. The appointment of Jaya Jose as a licensee was set aside.

4. The reasons stated by the Government in Ext.P5 order for preferring A.K.Paul to Jaya Jose are the following: (1) Jaya Jose had furnished solvency certificate for Rs.6 lakhs whereas A.K.Paul had furnished solvency certificate for a sum of Rs.7 lakhs. (2) A.K.Paul is a physically challenged person and taking a humanitarian approach, he should be appointed in preference to Jaya Jose.

5. As stated earlier, Ext.P5 order was challenged by Jaya Jose in the Writ Petition. The learned single Judge held that the requirement as per Ext.P1 was to produce solvency certificate for Rs.6 lakhs and, therefore, it was inappropriate on the part of the Government to appoint A.K.Paul on the ground that he had furnished solvency certificate for Rs.7 lakhs. The learned single Judge also found that a physically handicapped person is entitled to preference only while considering allotment of retail depots and that the rule conferring preference does not apply in the case of granting licence to run whole-sale depots. Thus the two reasons stated by the Government to appoint A.K.Paul were found to be invalid by the learned single Judge. However, the learned

single Judge, after quashing Ext.P5 order, relegated the matter for fresh consideration by the Government in accordance with the provisions of the Rationing Order, after hearing the parties. Direction for re-consideration by the Government was issued by the learned single Judge taking note of the submission made by the fifth respondent with reference to the contentions put forward by him in Ext.R5(d) Memorandum of Revision filed before the Government. The learned single Judge held that the Government did not consider the rival contentions put forward by the parties. The learned single Judge thought that a fresh consideration of the matter by the Government is necessary.

6. Jaya Jose is aggrieved by the judgment of the learned single Judge to the extent to which a remand is made to the Government for fresh consideration. The contention of the appellant (Jaya Jose) is that the learned single Judge, having found that the two reasons stated by the Government to appoint A.K.Paul are unsustainable, should have set aside Ext.P5 order and confirmed the order passed by the District Collector and the Commissioner of Civil Supplies.

7. Sri.T.P.Kelu Nambiar, learned senior counsel appearing for the appellant, would submit that the fifth respondent has not raised any contention in the counter affidavit filed by him that the Government has not considered any of the objections raised by him or that if any of the contentions raised by him were considered, he would have succeeded. Mr.Kelu Nambiar also pointed out that against the judgment of the learned single Judge, the fifth respondent has

not filed any appeal. The counsel for the fifth respondent submitted that various objections have been raised by the fifth respondent against the grant of licence in favour of the appellant (Jaya Jose) and if those objections are considered, the authorities would not have granted licence in her favour. The counsel also submits that the fifth respondent has no objection in the matter being considered by the Government afresh and, therefore, the fifth respondent need not file any writ appeal challenging the judgment of the learned single Judge. The fifth respondent also contends that the facts and circumstances as disclosed in the case would clearly show that the appellant is not a proper person to be appointed as a licensee of the whole-sale ration depot.

8. We do not propose to consider the rival contentions put forward by the parties and take a decision on the merits and demerits of their respective claims and objections. Any observation by us on those questions would cause prejudice to either or both the parties. We are not inclined to accept the contention put forward by the appellant that the fifth respondent having not filed any writ appeal, he is not entitled to support the judgment passed by the learned single Judge remanding the matter to the Government. The fifth respondent could support the judgment passed by the learned single Judge on any ground which is available to him. The fifth respondent is not aggrieved by the matter being re-considered by the Government. Therefore, it was not necessary for him to file any writ appeal at all against the judgment of the learned single Judge. We are also not inclined to accept the contention of the appellant that the learned single Judge having found that the reasons stated by the Government for

preferring the fifth respondent are unsustainable, the only consequence should be to confirm the order passed by the District Collector and the Commissioner of Civil Supplies. It is relevant to note here that Ext.P4 application, dated 11.8.2006, was submitted by the appellant before the Government requesting that the matter should be re-heard by the Government as the appellant was not served with a copy of the revision petition at the time of hearing on 4.8.2006. The appellant submitted in Ext.P4 that due to non-receipt of the revision petition, she could not effectively put forward her contentions at the hearing. In the Writ Petition, prayer No.(ii) made by the appellant is to issue a writ of mandamus directing the first respondent Government to hear the matter afresh as requested in Ext.P4. In view of the relief prayed for in the Writ Petition, the appellant is not justified in putting forward a contention that the learned single Judge should not have directed the Government to hear and dispose of the matter afresh. We are of the view that the learned single Judge was perfectly justified in passing the impugned judgment directing the Government to consider the matter afresh. No interference is called for in the judgment of the learned single Judge.

The Writ Appeal lacks merits and it is accordingly, dismissed. No order as to costs.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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